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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Petition of SBC for Forbearance From the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules and Modification of Operating, Installation and Maintenance Conditions Contained in the SBC/Ameritech Merger Order	CC Docket No. 96-149 CC Docket No. 98-141

PETITION FOR FORBEARANCE AND MODIFICATION

Richard M. Firestone
Paul S. Feira
Arnold & Porter
555 Twelfth St., N.W.
Washington, DC 20004
(202) 942-5820

Keith J. Epstein
SBC Data Services, Inc.
1010 N. St. Mary's St., Room 14B
San Antonio, TX 78215
(210) 246-8600

Gary L. Phillips
Anu Seam
SBC Communications Inc.
1401 Eye St., N.W.
Washington, DC 20005
(202) 326-8910

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PETITION FOR FORBEARANCE AND MODIFICATION

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), hereby petitions the Federal Communications Commission (the "Commission") to forbear from enforcing sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules,[1] which prohibit sharing of operating, installation and maintenance ("OI&M") functions by section 272 affiliates and Bell operating companies ("BOCs") and by section 272 affiliates and other affiliates of the BOCs.[2] The Commission also

[1] 47 C.F.R. §53.203(a)(2)-(3).

[2] Verizon also has requested relief from 47 C.F.R. §§53.203(a)(2) and 53.203(a)(3) in a petition for forbearance filed on August 5, 2002. *See Wireline Competition Bureau Seeks Comment on Verizon's Petition for Forbearance from the Prohibition of Sharing Operating, Installation and Maintenance Functions*, 17 FCC Rcd. 15,813 (2002). SBC continues to support that petition. *See Comments of SBC Communications Inc. in Support of Verizon's Petition for Forbearance*, CC Dkt No. 96-149 (filed Sept. 9, 2002).

should modify the provisions of the *SBC/Ameritech Merger Order*[3] that restrict the sharing of OI&M services.[4]

I. INTRODUCTION AND SUMMARY

The Commission's regulations should protect consumers and promote competition. To the extent the Commission's regulations impose costs, those costs should be justified by countervailing benefits. The Commission's OI&M regulations impair SBC's ability to provide timely, efficient, cost-effective and reliable service to its customers, and they do so without any countervailing benefits.

Under current FCC requirements, SBC's incumbent local exchange carriers ("ILECs"), long distance subsidiary and advanced services subsidiaries are restricted from providing for each other such OI&M functions as provisioning services, installing equipment, network monitoring, and maintenance and repair of network facilities. Specifically, SBC's long distance subsidiary may not provide OI&M services to SBC's BOCs, nor may SBC's long distance subsidiary receive OI&M services from SBC's BOCs or other affiliates. In addition, SBC's advanced service subsidiaries may not provide OI&M services to, but may receive OI&M services from, SBC's ILECs.

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[3] *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd. 14712 (1999) ("*SBC/Ameritech Merger Order*").

[4] In addition, as discussed in Part IV of this Petition, the Commission should make clear that the elimination of the OI&M restrictions would not affect the relief from tariffing it granted in *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27,000 (2002) ("*ASI Tariffing Forbearance Order*").

These restrictions exact substantial costs, not only from SBC, but also from consumers. For customers, the OI&M restrictions mean degraded service quality, less reliability, higher costs, inconvenience and delay. For example, an SBC customer who purchases a bundle of services that includes local voice service, long distance voice service and frame relay data service, might report a service outage to one of the SBC affiliates serving the customer. Based on the report, a customer service representative must try to determine whether the trouble is more likely attributable to the customer's local, long distance or frame relay service, and, based on that determination, either dispatch a technician from the customer service representative's company or transfer the trouble ticket to the appropriate subsidiary so that it can dispatch a technician. If the initial hypothesis proves incorrect, the technician visiting the customer's facility cannot fix the problem, no matter how simple, but instead must notify his or her organization that another technician from another subsidiary must now be dispatched. The customer, of course, remains without service until the new technician arrives, completes a diagnosis and undertakes the repair. The only explanation that SBC can offer to the customer for this inconvenience is that government regulations say that the first technician is not allowed to verify the diagnosis and cure the service outage.[5]

If such a customer asked the Commission to justify why their service outage could not be efficiently and quickly repaired, and why the deprivation of critical telecommunications services continued any longer than necessary, what response is possible? If a customer seeking a new package of services faces delay because of an inability to communicate, coordinate and efficiently install needed facilities when they

[5] *See* Deitz Affidavit, ¶ 6.

happen to be provided by different affiliates of SBC, will an answer that the FCC's OI&M rules require such delay, inefficiency and added cost placate the customer's concerns? If a customer seeks competitive bids to provide reliable essential services among all of its locations, would it be a satisfactory response to say that one of the carriers it might otherwise rely on will not be able to design and maintain all of the network components on a coordinated basis, to monitor their services end-to-end, or to diagnose and repair any problems efficiently wherever they occur? And if the costs of these regulatorily-mandated inefficiencies are passed through to the customers, and prevent cost and quality of service pressures from being brought to bear on competitors' pricing and service offerings, are customers better off?

Nor are the costs, inefficiencies and consumer harm created by the OI&M restrictions offset by countervailing benefits. Under current market and regulatory conditions, the limitations on the provision of OI&M services are not necessary to prevent cross-subsidization or discrimination, which are their stated purposes. Indeed, the Commission itself has recognized the self-evident proposition that price cap regulation has eliminated any threat of cross-subsidization. Moreover, while SBC's competitors will undoubtedly unleash their usual rhetoric about discrimination, in the real world, the risk of undetected discrimination is both speculative and remote.

Chairman Powell has recognized that the Commission should eliminate restrictions it cannot prove to be necessary. He has stated in this regard:

> if we don't have a clear and demonstrable justification of a rule, then the appropriate role of government is to take the rule away or not interfere in the otherwise proper functioning of a market, rather than leave a rule in for good measure. Over history a lot of rules that were left for good measure . . . have secondary effects that often harm the

> welfare of consumers. . . . I don't think you've got to prove to me that a rule is not necessary. I think I have to prove that it is necessary. And if I can't do that, I don't think that I should intervene.[6]

The OI&M restrictions clearly are not necessary, and they also clearly have secondary effects that harm consumers. Accordingly, the Commission thus should forbear from enforcing sections 53.203(a)(2) and 53.203(a)(3) of its Rules, and should modify the *SBC/Ameritech Merger Order* to permit the sharing of OI&M services.[7]

II. OI&M RESTRICTIONS

SBC is subject to restrictions on the provision of OI&M services as a result of the *Non-Accounting Safeguards Order*[8] and the *SBC/Ameritech Merger Order*. The *Non-Accounting Safeguards Order* prohibits SBC's long distance subsidiary from providing OI&M services to SBC's BOCs, and SBC's long distance subsidiary from obtaining OI&M services from SBC's BOCs or other SBC affiliates. This set of restrictions stems from the requirement in section 272(b)(1) of the Communications Act that the BOC and its section 272 affiliate "operate independently" from one another.[9]

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[6] *Powell Defines Stance on Telecom Competition*, Comm. Daily, May 22, 2001 at 2-3.

[7] In addition, as discussed in Part IV of this Petition, the Commission should make clear that the elimination of the OI&M restrictions would not affect the relief from tariffing it granted in the *ASI Tariffing Forbearance Order*.

[8] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905 (1996) ("*Non-Accounting Safeguards Order*").

[9] Section 272 also required a separate affiliate for manufacturing and certain interLATA information services, but these requirements have sunset. *Request for Extension of Sunset Date of the Structural, Nondiscrimination and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services*, Order, 15 FCC Rcd. 3267 (2000); *Implementation of Section 273 of the Communications Act*, Notice of Proposed Rulemaking, 11 FCC Rcd. 21784 (1996).

More specifically, it reflects the Commission's determination at the time that the OI&M restrictions would "protect against the potential for a BOC to discriminate in favor of a section 272 affiliate in a manner that results in the affiliate's competitors operating less efficiently."[10] This decision is codified in sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules, which provide:

> (2) A section 272 affiliate shall not perform any operating, installation or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.
>
> (3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.[11]

The *SBC/Ameritech Merger Order* extends certain OI&M restrictions to SBC's advanced services affiliates. Under merger conditions established in that order, SBC's advanced services affiliates may not provide OI&M services to SBC's ILECs, although SBC's ILECs are permitted to provide OI&M services to SBC's advanced services affiliates on a nondiscriminatory basis. [12]

While the Commission has never formally defined "OI&M," the Commission's staff has interpreted the term broadly in audits of SBC's compliance with the OI&M

[10] *Non-Accounting Safeguards Order*, ¶ 158.

[11] 47 C.F.R. §53.203(a)(2)-(3).

[12] Condition I to the *SBC/Ameritech Merger Order* states that SBC shall provide advanced services in areas where SBC and Ameritech operated as ILECs as of August 27, 1999 through an affiliate that is separate from SBC's ILECs in the same way that a Section 272 affiliate is separate from SBC's BOCs, except where otherwise provided in Condition I. The advanced service subsidiary's purchase of OI&M services from SBC's ILECs then is carved out later in Condition I from the general prohibition against performance or receipt of OI&M services.

restrictions, and this Petition will do the same. As such, OI&M includes, among other things:

- Operating: day-to-day network operations, including monitoring of switching and transmission facilities for outages or over-capacity and alerting appropriate personnel of any such issues.
- Installation/Provisioning: engineering and installation of switching and transmission facilities and associated software, and testing of circuits during the installation process.
- Maintenance/Repair: the care of switching and transmission facilities and associated software, both on a routine basis and in emergencies, including activities such as performing trouble isolation on a circuit in response to trouble reports or network alarms, and the repair of diagnosed problems.[13]

OI&M, as used in this Petition, also includes higher level activities, such as network planning and engineering ("NP&E") and design and assignment ("D&A").[14] NP&E includes activities that relate to both installation and maintenance of network

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[13] As described in the Declaration of Richard Dietz, the OI&M restrictions also affect numerous activities that are related to these functions. For example, SBC provides notice to customers in the event of a network outage or planned maintenance, as well as status reports on the progress of repairs. It also project manages network activity to ensure that budgets are in place, deadlines are met, and in order to minimize the impact on customers.

[14] OI&M, as used herein, does not include high-level fundamental architecture and technology planning, such as the following: providing annual network deployment guidelines to ensure consistency of approach, direction, and methodology for network deployment; issuing high-level enterprise-wide deployment plans developed in response to regulatory mandates, network modernization initiatives, and new services; developing high-level integrated technology plans for the embedded network; providing economic analysis for different proposals; assisting in business-case development and recommendations of initiatives; and selecting company-wide approved vendors and technologies.

facilities – for example, projecting customer demand; maintaining inventories of network equipment; assessing the adequacy of existing facilities to meet projected demand and determining where and when additional equipment needs to be deployed; placing orders for network equipment; making arrangements for collocation space; arranging for delivery of network equipment. D&A is more customer-specific. It involves the design of a particular customer's service (*e.g.*, identification of facilities and routing) and the assignment of facilities needed to provision that service. It can also include work activities, such as loop conditioning, that may be necessary to ready those facilities for the service in question. In addition, D&A includes the identification and ordering of services obtained from other affiliates or third parties that may be needed to provision the service to the customer.

SBC's principal competitors in the market for end-to-end services, including AT&T, WorldCom, Sprint and the cable television companies, are not subject to any of the OI&M restrictions that apply to SBC. Only the other BOCs operating in their in-region states are subject to the restrictions established in the *Non-Accounting Safeguards Order*, and only SBC is currently operating pursuant to OI&M restrictions with respect to its advanced services[15] SBC's principal competitors thus may serve their customers using a single set of engineers, technicians, support staff, customer service representatives, and systems, while SBC, because of these OI&M provisions, and in order to avoid tariffing requirements reserved only for dominant carriers, must operate with added costs that not only inflate the prices it must charge to consumers, but that also

[15] Verizon had been subject to a similar restriction on its advanced service affiliate, but this restriction was lifted when Verizon reintegrated its advanced services business with its LECs following *ASCENT* v. *FCC*, 225 F.3d 662 (D.C. Cir. 2001).

significantly complicate its efforts to provide the high level of service quality that customers expect and deserve.

III. THE COMMISSION SHOULD FORBEAR FROM ENFORCING THE OI&M RESTRICTIONS IN ITS RULES

The Commission should forbear from enforcing the OI&M restrictions in sections 53.203(a)(2) and 53.203(a)(3) of its Rules because the standard for forbearance is clearly satisfied. Under section 10 of the Communications Act,[16] the Commission is required to forbear from enforcing statutory provisions where the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.[17]

In making this determination, "the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services," and, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications

[16] 47 U.S.C. § 160.

[17] 47 U.S.C. § 160(a).

services, that determination may be basis for a Commission finding that forbearance is in the public interest."[18]

As shown below, those criteria for forbearance are clearly met. The OI&M restrictions impose considerable costs and burdens on SBC and – more importantly – its customers. They artificially inflate costs and impair service quality by imposing on SBC a highly inefficient business model involving redundant systems and personnel and a series of complicated hand-offs among affiliates that, despite SBC's best efforts, create delay, confusion and error. Moreover, they offer virtually no benefits to offset these considerable costs. They do not help ensure just and reasonable charges, practices and classifications; they are not necessary to protect consumers; they do not promote competition, nor in any other respect are they in the public interest. To the contrary, the only interest they serve is that of SBC's competitors, who get to compete against a competitor that is hobbled by burdensome regulatory restrictions.

A. Enforcement of the OI&M Restrictions Is Not Necessary To Ensure Just and Reasonable Charges, Practices and Classifications

Far from *ensuring* just and reasonable charges, practices and classifications, the OI&M restrictions serve to *inflate* consumer rates and *diminish* service quality by imposing on SBC a grossly inefficient business and cost structure. The separation of OI&M functions was originally required because of concerns about the risk of discrimination and cross-subsidization. Whatever the merits of the concerns at that time, it is now evident that separation of OI&M functions is not necessary to prevent cross-

[18] 47 U.S.C. § 160(b).

subsidization or discrimination and hence not necessary to ensure just and reasonable charges, practices and classifications.

1. Cross-Subsidization Is No Longer a Risk in a Pure Price Cap Environment

The OI&M restrictions do not protect ratepayers against cross-subsidization because the pure price cap regulation to which SBC is now subject makes cross-subsidization meaningless. While misallocating costs could have harmed consumers under the traditional rate-of-return regime or, to a lesser extent, under price caps with sharing, cross-subsidization is not a risk now that SBC's local exchange and access rates are capped. As the Commission has stated: "Because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able to recoup misallocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to allocate nonregulated costs to regulated services."[19] SBC thus has no reason to engage in any cross-subsidization, and prevention of cross-subsidization is not a potential benefit that can flow from or justify structural separation safeguards such as the OI&M requirements. Moreover, SBC remains subject to the Commission's detailed cost-accounting rules and auditing procedures. Those rules – which themselves are largely obsolete in today's world of price caps – were adopted specifically to guard against cross-subsidization[20] and provide an added layer of protection against any unjust and unreasonable charges that could result from cross-subsidization. Indeed, despite the fact

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[19] *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd. 7571, ¶ 55 (1991), *vacated in part and remanded on other grounds*, *California* v. *FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995).

[20] *Non-Accounting Safeguards Order*, ¶¶ 158-167.

that, for years, the BOCs have provided on an unseparated basis customer premises equipment, enhanced services and other nonregulated services, the Commission has never found any evidence of cross-subsidization by any BOC. Under these circumstances, the OI&M restrictions could not be deemed necessary to prevent cross-subsidization.

2. Discrimination Is No Longer a Risk in Light of Numerous Non-Structural Safeguards and Increasingly Intense Competition

The OI&M restrictions also are not necessary to protect SBC's long distance and advanced services competitors against discrimination by SBC's BOCs. SBC's advanced and long distance services competitors generally have opted either to provide their own OI&M services or receive them through automated processes. In either case, discrimination against advanced and long distance service competitors is nearly impossible. Even if discrimination were possible, marketplace realties make discrimination pointless, and extensive oversight by state and federal regulators would doom any attempt to engage in discrimination without detection.

Operations functions are provided internally by most of SBC's advanced and long distance services competitors, even though SBC's BOCs stand ready, willing and able to provide such functions for unaffiliated carriers. That is why, for example, unaffiliated carriers have largely eschewed virtual collocation arrangements in favor of more expensive physical collocation arrangements: carriers prefer to operate their own networks, not have others do it for them. With SBC's competitors by choice providing their own operations services, SBC's BOCs cannot discriminate against them by providing them with inferior service.

Installation services – such as circuit and network design, facility assignment, provisioning and testing – are provided on a substantially automated basis today, in contrast to earlier practice, leaving little room for individual discretion or opportunity to discriminate against competitors. Each of the mechanized systems used by SBC, such as Facility Assignment Control System ("FACS"), Loop Facilities Assignment Control system ("LFACS"), and Trunks Integrated Record Keeping System ("TIRKS"), assigns circuit components based on whether the components meet the technical requirements of the service requested. These systems do not perform their processes differently based on the identity of the customer, nor do these systems even contain information on the relative quality of facilities in inventory, only standard facility descriptions and codings that indicate whether facilities meet particular parameters.[21] Thus, as a practical matter, discrimination is impossible in the provision of these services. Nor would eliminating the OI&M restrictions in any way affect the nondiscriminatory nature of the circuit design and assignment processes. BOC circuits would still be designed and assigned through mechanized systems that consider only the technical requirements of the service, not the identity of the customer.

Maintenance services, such as trouble isolation and repair, also are not prone to discrimination. Elimination of restrictions on maintenance and repair would permit SBC

[21] Discrimination in the provision of switching functionality is equally impossible. In order to give a competitor a poorer grade of switching service, certain line or trunk ports would have to be specifically designed to support this poorer grade of service. Switches are not designed with different quality ports; to the contrary, all of the ports are the same within the systems. Thus discrimination in the provision of switching is a virtual impossibility.

to do for itself what its competitors do for themselves – perform diagnostic testing of their network facilities on an end-to-end basis and use a single technician to perform maintenance and repair. Indeed, ironically, although SBC's competitors generally test and repair their own facilities and do not seek diagnostic testing or repair services from SBC, SBC does, in fact, provide testing for at least one of its competitors. Thus, far from preventing discrimination, the OI&M restrictions put SBC at a disadvantage vis-à-vis its competitors, particularly with respect to large business customers who expect their telecommunications providers to have efficient end-to-end test and repair capabilities.

SBC already has procedures in place to ensure that trouble isolation and repair requests of all carriers are treated in a nondiscriminatory manner. For instance, trouble reports for all access services – whether by affiliated or unaffiliated entities – are handled in the same manner by prioritizing them based on the urgency of the situation. Thus, for example, an "out of service" ticket gets the highest priority. Once these tickets are prioritized, the service is tested, either through a mechanized system or manually to determine the source of the problem. Based on the test results, repair personnel are dispatched to remedy the problem regardless of the carrier that reported the trouble. The performance of the repair employees is subject to internal indices based on objective measures like timeliness of repair, again, regardless of the carrier associated with the report. SBC has not discriminated in that context and, similarly, it would not engage in any unlawful discrimination in the event it were asked to repair its competitors' own facilities.

Even if discrimination in the provision of OI&M services were possible, an ILEC's attempts at discrimination could provide no benefit to the ILEC's long distance and advanced services businesses unless the discrimination is widespread enough and of sufficient magnitude to influence consumer perceptions and, hence, their purchase decisions. Yet, as the Commission has found in a variety of contexts, the very nature of these thresholds makes detection of any such discrimination by competitors and regulators inevitable.[22] As the Department of Justice has concluded, "[D]iscrimination is unlikely to be effective unless it is apparent to customers. But, if it is apparent to customers, it is also likely to be apparent to regulators or to competitors that could bring it to the regulators' attention."[23]

If discrimination is not so widespread that it distorts the purchasing decisions of large numbers of customers, it has no relevant impact. And discrimination can have no benefit for the ILEC's long distance and advanced services businesses unless large numbers of customers who leave the victim of discrimination move their purchases to the ILEC's long distance and advanced services businesses. Yet, in the highly competitive long distance and advanced services marketplaces today, no ILEC affiliate could be assured of being the choice for a disgruntled customer, even if that customer decided not to use the carrier that was the victim of discrimination.

Commission safeguards further doom any attempt at discrimination. In those states where SBC has been granted section 271 authority, SBC is subject to extensive performance plans that measure almost every aspect of local exchange wholesale performance, with performance measures furnished on a monthly basis. Thus, any

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[22] *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee,* Memorandum Opinion and Order, 15 FCC Rcd. 14032, ¶ 190 (2000).

[23] Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgement, filed Feb. 3, 1987, at 96.

attempted discrimination by SBC would be easily detected and would subject SBC to substantial financial penalties.

In addition to the performance plans, SBC is subject to a host of statutory and regulatory nondiscrimination requirements. For example, section 202 prohibits "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services." It also prohibits SBC from providing "any undue or unreasonable preference or advantage" to its own affiliates. Likewise, section 251(c)(5), section 251(g), and the Commission's Rules thereunder impose network disclosure and equal access requirements that oblige BOCs to provide exchange access on a nondiscriminatory basis. Network elements also must be provided on a nondiscriminatory basis under section 251(c)(3). And section 272(e) requires parity in performance and access charges. All of these provisions will remain in effect even after the rest of section 272 sunsets, and until that time, the remaining requirements of section 272 will provide even more protection.

Enforcement options include section 271(d), which allows the Commission to order BOCs to correct violations of section 272, impose penalties pursuant to Title V, and suspend or revoke section 271 authority. The Commission also has enforcement power under sections 4(i), 503 and 206-209. Finally, the section 208 complaint process allows carriers to collect monetary damages for violations of these nondiscrimination provisions. In light of these protections, the OI&M restrictions are unnecessary to protect against discrimination.

B. Enforcement of the OI&M Restrictions Is Not Necessary for the Protection of Consumers

In addition to being unnecessary to protect against cross-subsidization and discrimination, the OI&M restrictions are also not otherwise necessary to protect consumers. Indeed, the OI&M restrictions harm consumers by degrading service quality and reducing competition.

1. OI&M Restrictions Hurt Customers By Degrading Service Quality

One way in which the OI&M restrictions hurt SBC customers is by impairing SBC's ability to provide high-quality, end-to-end services responsively and effectively. Because of the OI&M restrictions, separate personnel in separate organizations must perform similar and overlapping tasks for SBC customers with end-to-end services, all the while being careful to stay within imaginary boundaries having no relationship to customer needs or perceptions. This leads to unnecessary delays in the installation of new services and in repairs, which can cause enormous frustration, inconvenience and financial harm to customers. It also leads inevitably to errors and degraded reliability that result from the unnecessary bifurcation or even trifurcation of responsibilities that could and should be handled by one organization. SBC's principal competitors, of course, face no such restrictions, and potentially are able to serve their customers more quickly, accurately and conveniently.

The effect of the OI&M restrictions on service quality is almost self-evident, as the following example illustrates. Assume that a customer taking local, long-distance and advanced services from SBC files a trouble report with one of SBC's advanced services subsidiaries. In that instance, the advanced services subsidiary is prohibited from simply testing the customer's network on an end-to-end basis to identify the source of the problem. Instead, the advanced services subsidiary is permitted to test only its own facilities. If no problem is found, the advanced services subsidiary must attempt to determine, without the benefit of testing, where the problem is likely to reside. If the advanced services subsidiary believes that the problem is likely in the long-distance portion of the customer's network, the advanced services subsidiary representative must send a trouble report to the long distance subsidiary, give the long distance subsidiary time to diagnose and work out the problem, ask for status updates from the long distance subsidiary, and then inform the customer about the status.[24] If the advanced services subsidiary guesses incorrectly, the long distance subsidiary in turn must hand off the trouble ticket to the relevant SBC ILEC. In contrast, any facilities-based competitor of SBC could simply test across the end-to-end network it provides to the customer and respond to the customer directly.

Particularly for larger customers, which are often the most demanding with respect to service quality, outages and repair intervals, and which competitors serve using their own facilities end-to-end, the inability to provide end-to-end monitoring and repair is often a fatal flaw in an otherwise competitive bid.[25] Indeed, under the current structure, even with respect to customer locations where SBC's competitors use some ILEC facilities and not just their own facilities, SBC's BOCs are able to work with the competitors to test circuits and help provide the competitors' customers with seamless

[24] Declaration of Richard Dietz, dated June 5, 2003, ¶ 6.

[25] *Id.*, ¶ 9.

service. Yet, SBC cannot provide this same level of service for its *own* operations on behalf of their *own* customers.[26]

The current rules also complicate installation. For example, when SBC installs a Frame Relay network, it must use two project managers – one for the advanced services subsidiary and one for the long distance subsidiary. Each project manager, acting apart from the other, sends orders to the various work centers to initiate the turning up of service for the different pieces of the order. The two project managers cannot even work together to coordinate the installation of the network or determine whether the different pieces will work together properly.[27]

Customers suffer as the deployment of new technologies is delayed. For example, SBC's deployment of Private Virtual Circuits or "PVCs" on fast packet networks has slowed because SBC's advanced services subsidiary and long distance subsidiary must hand off installation functions from one to the other based on whether each function is deemed to be part of advanced services or long distance service.[28]

As these examples illustrate, the OI&M restrictions are harmful to customers and burdensome for SBC. They are also anachronistic. The technological and marketplace lines between local, long distance and advanced services are increasingly blurred. For example, broadband networks provide a platform for combining voice, data, video and other services into a backbone that is essentially distance insensitive. Yet, the OI&M restrictions require the use of multiple work groups to deal with arbitrarily delineated

[26] *Id.*, ¶ 6.
[27] *Id.*
[28] *Id.*, ¶ 7.

demarcations between "local," "long distance" and "advanced services" portions of what is technologically, as well in the minds of customers, a single integrated end-to-end service. In other words, while technology and the market spur *convergence,* the outmoded OI&M restrictions are grounded in the precepts of *divergence.*

2. OI&M Restrictions Hurt Consumers by Increasing Prices

The OI&M restrictions hurt consumers, not only by hindering SBC's ability to provide high-quality, reliable, end-to-end service, but by inflating its cost structure and, thus, the prices it must charge to recover its costs. Just allowing SBC's long distance, advanced services, and related non-BOC businesses to share OI&M functions would save $77,779,000 per year in needless costs.[29] One team could design networks for customers.[30] One set of computers could handle ordering and inventory management.[31] One team could install networks and test them end-to-end.[32] One team could monitor service quality,[33] and one network operations center could perform surveillance and monitoring of customers' networks.[34] One capacity management system could be used to track network utilization information, and one project management system could be used for coordinating maintenance and disaster recovery efforts.[35] One team could receive trouble reports and isolate the source of the troubles.[36] One network management system

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[29] *Id.*, ¶ 11. Even greater savings could be obtained if SBC's BOCs were also allowed to share OI&M functions with the long distance and advanced services businesses. *Id.*

[30] *Id.*, ¶ 13.

[31] *Id.*

[32] *Id.*, ¶ 14.

[33] *Id.*, ¶ 16.

[34] *Id.*, ¶ 18.

[35] *Id.*, ¶ 19.

[36] *Id.*, ¶ 14.

could monitor networks.[37] One local field operation could handle dispatch for installation and maintenance.[38]

3. OI&M Restrictions Hurt Consumers by Diminishing Competition

The harm that results from the OI&M restrictions extends beyond SBC's customers to all consumers. If SBC's provision of the best possible service – installation, repair, network monitoring, and the like – is hampered by the OI&M restrictions, then competitors face less marketplace pressure to use best practices themselves. Customer choices are more limited than they otherwise would be, other carriers are less concerned about the loss of customers over performance issues, and customer expectations with respect to quality are diminished as well. Network reliability, for all communications networks, may show the effects.

Similarly, if SBC's costs – and hence prices – are artificially inflated by unnecessary regulatory costs, SBC's competitors face less pricing pressure than they otherwise would. They need not operate as efficiently themselves, and certainly need not pass through cost savings to their customers.

C. Forbearance from the OI&M Restrictions Is Consistent with the Public Interest

As noted above, the OI&M requirements, not only increase SBC's costs of doing business by forcing it to maintain and operate separate, redundant systems and workforces, but they also impair its ability to monitor and repair its network. These latter effects, of course, are felt by consumers; they also have national security implications.

[37] *Id.*, ¶ 18.
[38] *Id.*, ¶ 17.

Denying SBC the ability to monitor its network on an end-to-end basis compromises its ability to detect network outages quickly and efficiently. Precluding SBC from performing diagnostic testing on an end-to-end basis delays and complicates the process of identifying the source of a network outage. And forcing SBC to divide network repair responsibilities among multiple work groups impedes the process of repairing the network. Yet, as noted above, in the face of substantial costs, the OI&M requirements offer virtually no public benefit. Under the circumstances, it necessarily follows that forbearance from these requirements would be consistent with the public interest.

Indeed, forbearance from these requirements would be consistent with a long line of precedent in which the Commission, in a variety of contexts, has recognized that the costs of structural separation requirements outweigh their benefits.

For example, in *Computer III*, the Commission found that structural separation imposes substantial costs resulting from the duplication of facilities and personnel, limitations on joint marketing, loss of economies of scope, and increased transaction and production costs. Significantly, the Commission found that *no* structural separation of the BOCs' enhanced services operations was necessary, and it did so despite the fact that the BOCs then maintained franchised monopolies for local service and were regulated both at the state and federal levels on a strict rate of return basis.[39] Equally significant, the Commission subsequently found that its decision to eliminate structural separation requirements for enhanced services had not resulted in any discrimination.[40] Surely, if

[39] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 104 FCC 2d 958, ¶ 3 (1986).

[40] *Computer III Remand Proceedings*, Report and Order, 6 FCC Rcd 7571 (1991).

structural separation is altogether unnecessary for a franchised monopoly regulated on a rate of return basis, then the OI&M requirements, in and of themselves, are not necessary in today's environment.

It is not just in the *Computer III* context that the Commission has recognized the high costs and limited benefits of structural separation. In *COMSAT*, the Commission found that non-structural safeguards are more than sufficient to prevent anticompetitive conduct, even for a dominant carrier, saying: "We find that COMSAT's continued dominance in the provision of switched voice, private line and occasional-use video services in non-competitive markets is not sufficient reason to continue structural separation because the costs would exceed the benefits."[41] The Commission also declined to extend the section 272 sunset for information services because of the non-structural safeguards that are available to protect against discrimination.[42]

Although the Commission has, in these other contexts, favored nonstructural safeguards over any form of structural separation, SBC is not here asking the Commission to forbear from section 272, or even from all its regulations under section 272(b)(1).[43] It is simply seeking forbearance from the OI&M restrictions. That is

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[41] *COMSAT Corporation; Petition Pursuant to § 10(c) of the Communications Act for Forbearance from Dominant Carrier Regulation*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 14083, ¶ 166 (1998).

[42] *Request for Extension of Sunset Date of the Structural, Nondiscrimination and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services*, Order, 15 FCC Rcd. 3267, ¶¶ 3-4 (2000).

[43] The Commission's regulations under section 272(b)(1) prohibit the SBC BOCs and the section 272 affiliate both from jointly owning switching and transmission facilities and from providing OI&M functions to each other. As stated above, this petition seeks forbearance only from the OI&M requirement.

all the more reason why forbearance from those restrictions is consistent with the public interest and compelled by the Commission's own precedent.

D. The Commission Has Authority Under Section 10 to Forbear from Applying OI&M Restrictions

The OI&M restrictions, which were promulgated under section 272 of the Act, are subject to forbearance under section 10. Under the plain language of section 10(d), only sections 251(c) and 271 are excluded from forbearance.[44] Congress did not include section 272 in its enumerated exceptions to forbearance in section 10(d), and section 272 cannot be shoehorned into the section 10(d) exclusion from forbearance by reading section 272 as merely an adjunct to section 271 that Congress must have meant to mention in section 10(d) but forgot.

Even if the plain language of section 10(d) were ignored and section 272 were deemed excluded from forbearance, the Commission could still forbear from applying the OI&M restrictions because they are regulations and not statutory requirements, and Congress did not exclude from forbearance any regulations promulgated under any section of the Act. Section 272 does not itself restrict the sharing of OI&M functions and, indeed, does not even refer to OI&M. The Commission has previously recognized that sharing of some services can and should be allowed while still complying with section 272(b)(1)'s mandate that the separate affiliate operate independently from the BOC.[45] As the Commission has said, "consistent with the letter and purposes of section 272, the term 'operate independently' does not require total structural separation, in light

[44] 47 U.S.C. § 160(d).

[45] *Non-Accounting Safeguards Order*, ¶ 168.

of the specific separation requirements, such as the requirements to maintain separate books, records and accounts, that Congress included elsewhere in section 272(b)."[46]

Thus, in promulgating the OI&M restrictions, the Commission struck a balance it thought appropriate at the time, and drew a line between what services could be shared and what services it decided should not, namely OI&M. In doing so, the Commission recognized the need for balancing, saying that the "economic benefits to consumers . . . inherent in the integration of some services" should be weighed against any potential for harm to competition."[47] So even if the Commission were to conclude that it did not have the authority to forbear from applying the terms of section 272 itself, that would still not mean it could not forbear from applying regulations adopted in striking a cost/benefit balance in implementing that provision. The Commission could revisit that balancing in any case, but clearly it has the authority to forbear from its application, even more so with respect to those aspects of OI&M services that today should not be viewed as significant to independent operation.

IV. THE COMMISSION SHOULD MODIFY THE PROVISIONS OF THE *SBC/AMERITECH MERGER ORDER* THAT RESTRICT THE SHARING OF OI&M FUNCTIONS

In addition to forbearing from the OI&M requirements promulgated under section 272, the Commission should modify the provisions of the *SBC/Ameritech Merger Order* that restrict the provision of OI&M services, as defined in this Petition, by SBC's

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[46] *Id.*

[47] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, Third Order on Reconsideration,* 1999 WL 781649, 17 Communications Reg. (P&F) 920, ¶ 18 (1999).

advanced services affiliates to SBC's ILECs.[48] In evaluating a request to modify the merger conditions, the Commission considers whether the modification serves the public interest and is tailored in a way that affirmatively and identifiably promotes the underlying purpose of the condition.[49] As discussed above, eliminating the OI&M restrictions would advance the public interest – the OI&M restrictions have come to inconvenience customers, degrade service and retard competition while providing no benefits. The underlying purposes of the OI&M restrictions in the *SBC/Ameritech Merger Conditions* also would be promoted. Such restrictions are supposed to "ensure a level playing field," "accelerate competition," and "hasten deployment." As demonstrated above, the OI&M restrictions have in fact put SBC at a serious disadvantage vis-à-vis its principal competitors, hindered SBC's ability to compete, and slowed deployment of advanced services, all without providing any countervailing benefits. The Commission has modified the *SBC/Ameritech Merger Conditions* when the Commission has found that doing so would advance the public interest,[50] and should do the same here.

The Commission also should make clear that elimination of the OI&M restrictions would not affect the relief from tariffing it granted in the *ASI Tariffing Forbearance Order*. The Commission granted relief from tariffing "to the extent SBC

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[48] While the *SBC/Ameritech Merger Order* addresses OI&M, NP&E, and D&A in separate paragraphs, FCC staff in its audit processes has treated OI&M as including all three terms. For purposes of this Petition and the relief to be granted by the Commission, therefore, we have followed the staff's direction and used the term "OI&M" to encompass OI&M, NP&E, and D&A.

[49] *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Ameritech Corp. and its Subsidiaries*, Second Memorandum Opinion and Order, 15 FCC Rcd. 17,521, ¶ 23 (2000).

[50] *Id.*

operates in accordance with the separate affiliate structure established in [the *SBC/Ameritech Merger Order*]."[51] Granting SBC the relief requested here from the OI&M restrictions in the *SBC/Ameritech Merger Order* would mean that SBC would still be in compliance with the *SBC/Ameritech Merger Order* and would not be a change in the separate affiliate structure established in the *SBC/Ameritech Merger Order* that would warrant the reimposition of tariffing requirements. Thus, the Commission also should clarify that the relief it grants here does not affect the relief from tariffing the Commission granted in the *ASI Tariffing Forbearance Order*.[52]

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[51] *ASI Tariffing Forbearance Order*, at ¶ 13.

[52] In eliminating its restrictions on the sharing of OI&M services, the Commission ALSO should make clear that Section 272 affiliates can provide OI&M services to, and receive such services from, each other. Section 272 affiliates should be able to share OI&M services with each other. Section 272 provides that a BOC may provide certain services only through "one or more affiliates" that "operate independently from the Bell operating company" and meet certain other requirements. If a BOC chooses to provide such services through multiple affiliates, as Section 272 allows, and if each affiliate is appropriately separated from the BOC, then there is no statutory basis for restricting the provision of OI&M services between the Section 272 affiliates. Section 272 only requires independence from the BOC, and not from other Section 272 affiliates.

The Commission should accord similar treatment to SBC's Section 272-like advanced services subsidiaries, which should be able to provide OI&M services to, and receive such services from, each other and from Section 272 affiliates. SBC's advanced services subsidiaries are not any less separate from SBC's BOCs than SBC's Section 272 affiliates in any way that is relevant to the OI&M restrictions. The Section 272-like affiliates "operate independently" from the BOCs just as the Section 272 affiliates do, and so the requirements of the Act would be satisfied if the Section 272-like affiliate were to provide OI&M services to the Section 272 affiliates. The operational differences between a Section 272-like advanced services affiliate and a Section 272 long distance affiliate also are not significant enough to provide any policy justification for imposing OI&M restrictions.

VI. CONCLUSION

The prohibitions on sharing OI&M functions harm rather than serve the public interest. Consumers suffer from service degradation, delayed repairs and inefficient installations, as restrictions are imposed on SBC's provision of high-equality, end-to-end service. Consumers also suffer from reduced competition, as artificial costs and limitations on the ability to respond efficiently to customer needs are imposed on SBC, but not SBC's competitors. Moreover, such OI&M sharing restrictions are not necessary to prevent cross-subsidization or discrimination, and thus no public interest benefits flow from them.

Is sending multiple technicians from multiple affiliates on multiple service calls to a customer's facility to repair a problem that one technician could fix on one service call critical to ensuring independent operations? Does slowing the installation of new broadband services and other capabilities for customers while different installers work separately on different parts really weigh the effects on customers against realistic risks to significant areas of concern? We submit that they clearly do not, and the Commission should remove the prohibitions on sharing OI&M functions.

Respectfully submitted,

Richard M. Firestone
Paul S. Feira
Arnold & Porter
555 Twelfth St., N.W.
Washington, DC 20004
(202) 942-5820

Keith J. Epstein
SBC Data Services, Inc.
1010 N. St. Mary's St., Room 14B
San Antonio, TX 78215
(210) 246-8600

Gary L. Phillips
Anu Seam
SBC Communications Inc.
1401 Eye St., N.W.
Washington, DC 20005
(202) 326-8910

Counsel for SBC Communications Inc.

June 5, 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Petition of SBC for Forbearance From the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules and Modification of Operating, Installation and Maintenance Conditions Contained in the SBC/Ameritech Merger Order	WC Docket No. ________

DECLARATION OF RICHARD DIETZ

I, Richard Dietz, being of lawful age and duly sworn upon my oath, do hereby state as follows:

1. My name is Richard Dietz. I am President and CEO of SBC Data Services, Inc. My duties include supervision of SBC's data services and long distance affiliates, which currently include, among other entities, SBC's section 272 long distance affiliate (referred to here as SBC Long Distance, Inc. ("SBCLD")), SBC's advanced services affiliates (collectively referred to here as SBC Advanced Solutions, Inc., ("ASI")), SBC's data equipment and customer network management affiliate (referred to here as "SBC DataComm"), and SBC's Internet access affiliates (collectively referred to as SBC Internet Services ("SBCIS")). I have previously held positions in finance, corporate recruiting, information systems, strategic planning, regulatory, network operations, sales, customer services, network engineering and construction, and marketing for SBC Communications Inc. companies. I received a Bachelor of Science degree in engineering in 1968 from Case Western Reserve University in Cleveland, Ohio, and a master's degree in business administration from Washington University in St. Louis in 1974. In my current position, I have first-hand knowledge of the costs and burdens on SBC and on consumers resulting from the various structural separation regulations imposed on these lines of business.

2. Among those structural separation requirements are requirements applying to the operating, installation and maintenance ("OI&M") of switching and transmission facilities, to design and assignment ("D&A"), and to network planning and engineering ("NP&E") of the various network components. The purpose of this declaration is to describe the specific costs and burdens imposed by those requirements on SBC and its customers. In particular, I show how the OI&M, D&A

and NP&E (collectively referred to for purposes of this declaration as "OI&M") restrictions impair SBC's ability to provide effective customer service, cause customer confusion and frustration, needlessly prolong service outages, diminish customer expectations of network reliability, and impose significant direct costs on SBC and ultimately consumers, all of which constrains SBC's ability to provide the highest quality service at the best price, thereby reducing competition in the marketplace.

3. The FCC's OI&M restrictions require forced separation and duplication of a number of critical functions and facilities among SBC's various affiliates. Among other things, these restrictions preclude SBC from using common systems and personnel to monitor the operation of its network facilities to ensure that they are functioning properly and to identify any malfunctions, outages or over-utilization. They also prevent SBC from integrating the systems, personnel and processes responsible for installing network facilities. In this regard, they not only require separate organizations for the actual provisioning of network facilities, but also prevent SBC from engaging in joint network planning and engineering, or in design and assignment of those facilities. The restrictions also impose forced separation on SBC's maintenance and repair activities. That forced separation can complicate and delay the process of diagnosing and repairing network problems. For example, when a customer who obtains service from ASI and other affiliates reports a service problem to ASI, ASI is not permitted even to test the customer's logical and physical circuit on an end-to-end basis, much less assume responsibility for any repair that might involve another affiliate's facilities. Thus, if after testing its own facilities, ASI determines that the problem is not in its own network, ASI must attempt to determine, without the benefit of testing, the source of the problem and refer the trouble ticket accordingly. If ASI guesses wrong, another hand-off is required. If there are problems in two different networks, multiple technicians must be dispatched.

4. These OI&M restrictions affect all customers that request combinations of long distance, advanced services and local services, but their most significant impact is on medium-sized and large business customers. These customers generally require multiple services with sophisticated networks to connect numerous employees at different locations. Consequently, they demand specialized services from telecommunications carriers. They require dedicated account teams, custom engineered solutions to their business needs, and a single point of contact for customer service. Seamless end-to-end service and the efficient provisioning of the network are of the essence for these customers.

5. The OI&M restrictions prevent SBC from effectively and efficiently meeting these customers' expectations for service. As a result of those restrictions, SBC must attempt to meet the multi-faceted requirements of its business customers using the services of multiple affiliates that operate largely independently of one another and are inhibited by regulation in their ability to coordinate with one another. For example, in order to better serve medium-sized and large business customers, SBC has created multiple customer support centers to attempt to serve as single points of interface for the customer. To that end, SBC DataComm has customer support

centers that coordinate and facilitate the installation, monitoring, maintenance and repair of high capacity local transport, advanced data services (e.g., ATM, Frame Relay), customer premises equipment and local area networks. SBC has also established "Major Account Centers" within the BOCs to perform some of the same functions for customers whose needs are different from those served by SBC DataComm. But while SBC can establish single points of contact that obviate the need for customers to make multiple phone calls, SBC cannot provide the follow-up OI&M functions necessary to serve its customers in an integrated, efficient and coordinated manner. Instead, SBC must use separate, sometimes multiple, organizations to perform these functions in piece-parts through a series of hand-offs and iterative processes. This results in increased costs, delays in installation, maintenance and repair, and a reduction in the quality and reliability of SBC's service. These costs are not unnoticed by consumers. Many consumers who would otherwise consider SBC for their service needs instead limit themselves to SBC's competitors, who do not operate under similar restrictions. As a result, the OI&M restrictions effectively reduce customers' choice in the marketplace.

6. One of SBC's recent projects for a major federal regulatory agency illustrates the inefficiencies created by the OI&M regulations. SBC recently installed a Frame Relay network for the agency, which involves local and long distance network components. Because of the OI&M restrictions, SBC was forced to designate two project managers during the installation process -- one for ASI for the provision of the local fast packet service and one for SBCLD for the long distance data components -- who send orders to the various work centers and initiate the turning up of service for the different pieces of the order. SBC also was forced to use separate, redundant operation support systems ("OSS") for the provision of network facilities. Once the service was installed, and the systems put in place, the duplication continued. For example, SBC was forced to use separate network monitoring systems – one for ASI and one for SBCLD.[1] When the agency reported trouble on one of the circuits (which consists of transport, a Frame Relay port, and the routing logic within the Frame Relay network), SBC often had to use two sets of personnel and systems to isolate and repair the trouble on either the interLATA transport components or on the local Frame Relay components. Initially, ASI, working alone, had to determine if the trouble was on its portion of the network. In those instances in which it was not, ASI had to pass the trouble ticket to SBCLD, so that SBCLD could initiate its own testing of its portion of the circuit. This second, duplicative test was required because ASI is not itself permitted an end-to-end view of the circuit. As a result, diagnosis and repair were delayed, outages needlessly prolonged and costs artificially inflated.

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[1] SBC had a similar experience while recently providing service to a large insurance company. Because of the OI&M restrictions, the BOC employees were not able to coordinate efficiently with SBC's long distance network employees. Because a single design engineer was prevented from optimizing the network design and selecting the optimal meet points for the customer, the customer became dissatisfied and went to another service provider who could integrate network design and operations into a single step process.

7. Another example further illustrates the ways in which the OI&M restrictions delay the installation of service to ASI's customers. ASI's medium and large business customers often require local and long distance ATM and Frame Relay service. Although ASI has the necessary expertise to provision the Private Virtual Circuits ("PVCs") on the fast packet network and to perform logical "mapping" of the PVCs for long distance circuits, ASI is not permitted to do so under the existing regulations. As a result of the requirement to hand off logical provisioning on the fast packet networks between SBCLD and ASI personnel, fast packet service customers have experienced extended due dates and, sometimes, multiple changes in the due dates. This has eroded customer confidence in SBC's provision of long distance advanced services.

8. A third example illustrates one of the ways the OI&M restrictions can increase the risk of service outages and delay repair of the network. In order to meet its regulatory obligations, SBC has installed optical concentration devices ("OCDs") in many of its end offices. These OCDs enable CLECs to provide DSL service to consumers using SBC's Project Pronto architecture. The OCD equipment performs routing and aggregation of packetized data similar to what is done by an ATM switch. Because of its responsibilities for the deployment and maintenance of packet switches, ASI has equipment and expertise that the BOC would find useful in monitoring and maintaining OCDs. Because of the OI&M restrictions, however, ASI is not permitted to provide OI&M support to the BOC. Recently, the BOC experienced two outages while upgrading its OCD network – the first lasted almost 5 hours and the second one about 8.5 hours. Had ASI been able to assist the BOC with the operation of the BOC's OCD equipment, this outage might have been avoided altogether. Had ASI been able to assist the BOC with the repair of the OCD equipment, the repair might have been completed in a shorter period of time.

9. Given the impact the OI&M restrictions have on the ability of SBC to address its customers' needs, these restrictions effectively result in lost business opportunities for SBC and reduced choices for customers. This point, as well, is illustrated by a recent example. SBC recently submitted a bid for the business of a customer who provides imaging archival storage service to large financial institutions. This customer was seeking local, long distance and advanced services from a single carrier. The primary requirement for this customer was that the telecommunications carrier provide it with a single point of contact ("SPOC") who could ensure end-to-end service to reduce "downtime" on the network. SBC proposed a network solution that consisted of 12 remote locations with long distance access from SBCLD to ATM switches provided by ASI, two host sites connected to the ATM via its OC-12 facilities from the BOCs, Cisco VPN Routers at Remote and Headquarter sites from SBC DataComm, with SBC DataComm acting as the nominal single point of contact. Although SBC's proposal was competitive on price and functionality, the customer would not use SBC because SBC's solution required multiple operational hand-offs instead of focused and direct management control. This serving arrangement was viewed by the customer as increasing the potential for additional downtime and was deemed

unacceptable.[2] As a result, the OI&M restrictions effectively denied the customer the choice of SBC as a service provider.

10. The OI&M restrictions do not merely cause operational problems, such as longer installation intervals and delays in service repair. They also substantially increase SBC's cost of doing business by forcing it to maintain redundant OI&M personnel, equipment and systems and by limiting interface and coordination among them. Those additional costs must be reflected in the prices SBC offers in the marketplace. For example, SBC recently lost a bid for the business of a large customer because SBC's estimates for site engineers, installation costs and other relevant costs were 30% higher than the winning bid. Had SBC not been forced to bear those increased costs, it could have offered a much more attractive price which, in turn, might have spurred its competitors to lower their own bids. Regardless of whether SBC would ultimately have won the bid, the customer would have had more choice and paid a lower price.

Costs of Separate OI&M Operations

11. If the OI&M restrictions were removed, SBC would immediately begin integrating OI&M functions among SBCLD, ASI and the other SBC Data Services affiliates. The savings from this integration alone would amount to $77,779,000 per year, not including any additional savings SBC would realize in the future if it integrates OI&M functions between the SBC BOCs, on the one hand, and ASI and SBCLD on the other.[3]

12. SBC calculated its estimated savings from integrating OI&M functions among SBC Data Services subsidiaries based on an analysis that was performed at my direction to identify savings in terms of labor expense, operational expense and capital on an annual basis if these restrictions are lifted. The costs saving to be realized from elimination of the OI&M restrictions detailed in the following paragraphs have been identified by work function.

13. Ordering, Circuit Design and Facility Assignment. Currently, SBC Data Services must maintain at least three sets of systems and workforces for ordering, circuit design and facility assignment, including separate systems for ASI and SBCLD. With removal of the OI&M restrictions, SBC Data Services would integrate these systems and workforces into one centralized system and work group for all of those

[2] This is not an isolated incident. SBC recently lost the opportunity to provide services on two additional contracts with financial institutions that cited SBC's lack of an integrated network management system as the basis for rejecting SBC's bid.

[3] SBC did not include savings from the sharing of OI&M functions with the SBC operating companies in this initial estimate, in part, because SBC believes it will be able integrate OI&M functions among the SBC Data Services affiliates quickly, whereas any future integration with the operating companies will take longer. In addition, SBC can estimate the savings resulting from integration of OI&M functions among SBC Data Services affiliates with far more precision today than it can estimate the additional savings that would result from the sharing of OI&M functions with the operating companies.

entities. The projected savings from the consolidation of the systems software and hardware is 25% of the existing costs of maintaining and operating those systems. Consolidation of these functions would also permit consolidation of work forces responsible for manual handling of orders that fall out of the system, circuit design and facility assignment. Labor savings are estimated to total 25% of the existing labor and related employee expense associated with these functions. The total expected savings is $10,660,000 annually in labor, expense and capital.

14. Provisioning, Installation, Maintenance and Repair. The OI&M restrictions prohibit SBCLD and ASI from sharing with one another and with the other SBC Data Services affiliates personnel and systems used to provision, install, maintain and repair network components. As a result, SBC must maintain duplicative systems and personnel to provision and install service, test the service after provisioning and installation to ensure that it is working, post the installation order as complete, perform diagnostic testing in response to trouble reports to identify the facilities responsible for the trouble, hand off the trouble ticket to the appropriate work center to perform the repair, repair the service, re-test the service when the repair is complete and notify the customer, and also notify customers of outages or of planned maintenance activities. The duplication of these functions among several affiliates requires redundant systems and personnel. Moreover, the process of provisioning, installing, maintaining and repairing network facilities is complicated and delayed by the need to hand off work items among multiple affiliates, each responsible for only a piece-part of the overall project and each of which may be required to duplicate work already performed. With removal of the OI&M restrictions, one entity could install, provision, maintain and repair network facilities for all of the SBC Data Services companies. This would eliminate the need for duplicative hardware, software and personnel and also eliminate the multiple hand-offs that complicate and delay the performance of these activities. The savings from integrating these functions would be $41,790,000 in labor, expense and capital.

15. Program/Project Management. Program and project managers perform coordination functions to ensure that various company initiatives are appropriately prioritized, managed and funded. The initiatives they manage can be broad in scope (*e.g.*, various work activities to improve network reliability) or narrow in scope (*e.g.*, deployment of a particular piece of network equipment or of a customer's service. Because of the OI&M requirements, SBCLD, ASI and the other SBC Data Services affiliates must maintain separate program and project managers. For example, when installing a frame relay service, ASI and SBCLD must designate separate project managers to ensure timely and appropriate implementation of the products and services. A single program management office could perform this function for all impacted affiliates. The current structure is inefficient and increases the risk of error from the difficulty of coordinating the various components. It also adds costs due to the duplication of personnel and system resources to manage the implementation of the same product for each of the affiliates. It is anticipated that removal of the OI&M restrictions would result in savings from integrated Program/Project Management of $1,540,000 in labor, expense and systems.

16. Performance Metrics, Customer Service Quality and Executive Complaint Group.

a. Performance Metrics. SBCLD, ASI and the other SBC Data Systems companies use performance metrics and measures to track the quality of their services and, on occasion, to provide information on service quality to their customers. As a result of the OI&M restrictions, each entity must develop its own performance metrics and individually track its own performance in the areas of provisioning, service quality and repair. This requires redundant systems for generating, maintaining and storing data. Elimination of separate performance metrics and reporting capabilities would save approximately $180,000 annually in labor, expense and capital.

b. Customer Service Quality ("CSQ"). CSQ personnel survey customers to track customer satisfaction with their overall experience with SBC. The personnel performing these functions utilize identical skills for development of business requirements, design of surveys and reports, and analysis of results. As a result of the OI&M restrictions, SBCLD and ASI must maintain an independent staff (separate from one another and the other SBC Data Services affiliates) for performing these identical functions and they are prohibited from coordinating. If the OI&M restrictions were lifted, SBC could perform these functions on a more integrated and efficient basis, thereby saving time for project management, training, planning, skill development and defining best practices. It is anticipated that this would result in savings of $425,000 annually in labor and employee-related expense.

c. Executive Complaint Group ("ECG"). ECG is a discrete group responsible for handling customer complaints that have been escalated to the executive level. ECG will take all steps necessary to address the complaint, including, if necessary, ordering the dispatch of an installer or repair technician. It also will analyze the root causes of complaints and develop long-term solutions. In order to perform their functions, ECG personnel must have access to systems and data relating to or used in the provisioning, installation and maintenance of various services. Because of the OI&M restrictions, however, SBCLD and ASI must maintain ECG organizations that are separate from one another and the other SBC Data Services affiliates. Thus, the resolution of a complaint from a single customer with service from multiple affiliates requires coordination among the ECG personnel of different affiliates. Moreover, the current structure is inefficient and requires the use of multiple systems for tracking and multiple post-sales support contacts for end users. Having functionality within the same groups optimizes resources, promotes process standardization and avoids duplication of job functions. Integrated service support and management enhances customer relations and increases satisfaction for the customer. Consolidation of multiple ECGs and combining systems to a centralized structure would allow for labor and expense savings of $300,000 annually.

17. Local Field Operations and Dispatch. Currently, two separately managed local field operations ("LFO") groups are dispatched (usually to the customer's premises) for

DSL provisioning for ASI, and CPE installations and maintenance for SBC DataComm business customers.[4] With removal of the OI&M restrictions, SBC DataComm could assume the installation, maintenance and repair of network facilities and CPE. The projected savings of the consolidation of the systems software and hardware is 10% of existing costs for information technology operations and systems support. The ASI LFO operations savings is projected to be 5% of ASI's LFO workforce. The savings from integration of LFO and technician dispatch operations are expected to be approximately $6,075,000 in labor, expense and capital.

18. Surveillance and Monitoring.

    a. Network Operations Centers. Currently, three separate affiliates within SBC Data Services must maintain their own Network Operations Centers ("NOCs") to perform their own surveillance and monitoring of customers' networks, to initiate appropriate action in the event of customer impacting events, such as outages or planned maintenance activity, and to manage certain network projects, such as planned maintenance activity that affects a large group of customers. Each of these affiliates may perform these functions only with respect to the network facilities it provides. With removal of the OI&M restrictions, SBC could consolidate the separate NOCs into a single NOC that would be able to monitor customers' services on an end-to-end basis, and perform the functions in consolidated fashion. This would result in substantial workforce savings. Specifically, SBC estimates that the integration of NOC operations would save approximately $12, 819,000 in labor and employee-related expenses.

    b. Network Management Systems Duplicate Licenses. Because three separate affiliates use many of the same systems and applications for network monitoring, but cannot share these systems because of the OI&M restrictions, they must pay for duplicate applications licenses and duplicate hardware. If the three affiliates were permitted to consolidate operations, SBC would realize a savings of $425,000 in software licensing expense. In addition, it would enable SBC to redeploy some of the servers used in the NOCs and thereby save $1,100,000 in capital expenditures for hardware.

19. Network Capacity Management. The OI&M restrictions require SBCLD and ASI to use systems and personnel that are separate from each other and from those of the other SBC Data Services affiliates to track network capacity and utilization to ensure that adequate capacity has been deployed to meet customer needs. Thus, SBC must use duplicative hardware, software and personnel to perform these functions. With relief from the restrictions on OI&M, ASI and SBCLD could integrate their systems and processes into one capacity management system, thereby eliminating the need for redundant servers and personnel. This would result in a saving of $677,000 annually in labor, expense and capital.

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[4] SBC DataComm is an affiliate of the SBC BOC that provides CPE, CPE monitoring, CPE maintenance and repair, and customer network (i.e., LAN, WAN) management services.

20. Staff Product Support. Personnel and systems providing "staff support" for SBCLD and ASI today must operate isolated from one another and from the other SBC Data Services affiliates. Staff support includes functions such as documenting methods and procedures ("M&P"), writing systems requirements (that is, identifying the functions the systems need to perform), and designing and developing processes for network monitoring, installation, design, maintenance and repair for ASI and SBCLD products. There are similar staff functions in each of the two companies that could be combined due to the commonality of the work effort required. The consolidation of these resources would result in a more efficient customer experience, as well as lower overall product costs. These product support functions could be consolidated and performed by one person on a product-by-product basis (e.g., interLATA and intraLATA Frame Relay Service), given that the skills, expertise, training and experience required to perform these functions are the same regardless whether the network facilities are used for local transport, long distance or advanced services. Having functionality within the same group optimizes resources, promotes process standardization, and eliminates potential duplication of job functions. Furthermore, integrated product support increases the odds of successful product implementation across the affiliates, which results in a better experience for the customer. It is anticipated that removal of the restrictions will result in a savings from Product Support of about $829,000 in annual labor, expense and systems support costs.

21. Real Estate. With removal of the OI&M restrictions, SBC will realize a savings in real estate in relation to the personnel eliminated by integrating duplicative functions. The reduction in headcount will reduce the costs associated with utility and phone bills, furniture rentals, PC leases and other incidental real estate costs. The projected savings from headcount reduction is at least $959,000 in annual expense.

22. Thus, the restrictions imposed on SBC – but not its competitors – impose significant costs on SBC, costs that are ultimately borne by consumers in the form of increased prices and reduced choices in the marketplace. Not only are the direct costs of these restrictions substantial, but the impact on customers is substantial as well. As demonstrated above, the OI&M restrictions impair SBC's ability to provide seamless service, cause enormous customer confusion and frustration, needlessly prolong service outages, and diminish customer expectations of network reliability. These restrictions harm rather then serve the public interest and should be eliminated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 5, 2003

Richard Dietz
President & CEO
SBC Data Services, Inc.